Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	DA 10-500
Review of the Emergency Alert System	)	EB Docket No. 04-296
	)	

To: The Public Safety and Homeland Security Bureau

INFORMAL REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)[1] submits these informal reply comments in response to the Public Safety and Homeland Security Bureau's (PSHSB) request for comments on possible changes to the Commission's Part 11 rules regarding the Emergency Alert System (EAS).[2] The PSHSB seeks input on ways to facilitate the implementation of a common alerting protocol (CAP) by the Federal Emergency Management Agency (FEMA).

I. Introduction and Executive Summary

As the only free communications services providers that reach virtually all Americans, broadcasters take pride in their unique role in the dissemination of emergency information to the public. Local television and radio stations serve the public

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[1] NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] Public Notice, *Public Safety and Homeland Security Bureau Seeks Informal Comment Regarding Revisions to the Federal Communications Commission's Part 11 Rules Governing the Emergency Alert System Pending Adoption of the Common Alerting Protocol by the Federal Emergency Management Agency*, DA 10-500, EB Docket No. 04-296 (March 25, 2010) (EAS Public Notice).

interest by helping to protect and preserve the lives and property of every person who lives, works or passes through their broadcast coverage areas. Broadcasting is the "backbone" of both EAS and public warning, and shall remain so as the Commission and FEMA implement the next generation of EAS.[3] Viewers and listeners have come to rely on broadcasters' live, in-depth news during times of national or local emergency, severe weather conditions, and other crises requiring extended news coverage. A reliable EAS network is a critical element of these efforts.

NAB supports the Commission's opening of this inquiry to identify potential updates to its EAS rules to facilitate the next phase of EAS. NAB offers proposals in these reply comments concerning extension of the current 180-day period for EAS Participants to process a CAP-based alert,[4] development of EAS training for state and local emergency managers, governor-triggered EAS messages, cable overrides, and the continued use of legacy EAS networks.

II. The 180-Day Period for EAS Participants to Accept CAP-Based EAS Messages Should Be Extended

The Commission seeks comment on the existing requirement that EAS Participants be able to accept CAP-based alerts within 180 days after FEMA publishes the technical standards and requirements for CAP.[5] The overwhelming majority of

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[3] *FEMA Edges Closer to Next-Gen EAS*, RadioWorld, April 22, 2010, quoting Damon Penn, Assistant Administrator, National Continuity Programs Directorate, FEMA, available at http://www.rwonline.com/article/99678.

[4] EAS Participants include AM, FM and television broadcast stations, cable systems, wireless cable systems, Direct Broadcast Satellite systems, Satellite Digital Audio Radio Services, and others. 47 C.F.R. § 11.1.

[5] EAS Public Notice at 2 citing Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, EB Docket No. 04-296, *Second Report and Order and Further Notice*

commenters agree that 180 days is insufficient to accomplish all the tasks needed for successful deployment of new CAP-compliant equipment. The record reveals several obstacles to this timeline.

First, FEMA may not announce the final details of the CAP standards until close to its publication of those standards in September 2010. Vendors will need sufficient time to incorporate those details into their software products before design of the products can be finalized.[6] Similarly, EAS system architects will need time to adapt networks to enable EAS equipment to accept CAP messages, as transitioning to a new technical architecture is a complicated process.[7]

Second, all new EAS equipment, including both software and hardware, will need to be run through multiple phases of testing. Manufacturers will need to perform tests on the end products of their design, including conformance testing at a certified lab to obtain Commission certification.[8] As Trilithic states, many systems require three to six months of testing new equipment or software before it can be deployed in the field.[9] Also, EAS Participants will need to test the functionality of the new equipment following installation. All of this testing could take as long as 180 days alone.

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of Proposed Rulemaking, 22 FCC Rcd 13275, 13289 (2007) (EAS 2nd R&O/EAS FNPRM); 47 C.F.R. § 11.56.

[6] Monroe Electronics Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 6; TFT, Inc. Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 9.

[7] As Monroe Electronics states, "The system will not work better simply we desire it to be implemented faster. Better to do this systematically and correctly, allowing time for a smooth transition." Monroe Electronics Comments at 7.

[8] National Cable & Telecommunications Association (NCTA) Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 3; Trilithic Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 2; Gary E. Timm Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 8.

[9] *See, e.g.*, Trilithic Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 2.

Third, the 180-day period does not build in any time for unexpected problems, such as delays in the delivery of equipment components to manufacturers. Also, as Trilithic notes, "current lead times on electronic components are substantially longer than usual and are often as long as 6 months." Trilithic Comments at 2.

Fourth, it is entirely possible that EAS Participants may experience delays in the ordering, stocking and delivery of CAP-compliant equipment. These products are primarily manufactured by a limited number of relatively small sized manufacturers, as compared to an end user market of approximately 30,000 EAS Participants that may order new equipment.[10] Vendors will obviously need some period of time to ramp up manufacturing to meet these demands. TFT also notes certain problems that may arise during installation. For example, CAP decoding equipment will require Internet connections and the availability of CAP servers with emergency information relevant to an EAS Participant's locality. However, not all locations with EAS encoders/decoders have Internet access. Therefore, some EAS Participants may have to contract separately for installation of this capability before installing CAP-compliant EAS equipment. TFT, Inc. Comments at 8.

Finally, the Commission should consider the fact that many vendors and EAS Participants must budget their expenses well in advance of expenditure. Monroe Electronics Comments at 7. The 180-rule would place EAS Participants in the difficult position of trying to budget for equipment that is not yet designed or built, let alone priced by vendors. TFT Comments at 8. Many EAS Participants are public institutions

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[10] SpectraRep LLC Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 4; TFT Inc. Comments at 8; Texas Association of Broadcasters (TAB) Comments, EB Docket No. 04-296, DA 10-500 (May 18, 2010), at 5.

or receive funding from public resources, and they will be unable to obtain funding approval quickly enough to comply with the 180-day deadline. SpectraRep Comments at 5. Many of these entities have annual budgeting cycles that will not accommodate mid-year adjustments related to new EAS equipment. TFT, Inc. Comments at 8.

Accordingly, NAB encourages the Commission to reconsider the existing 180-day deadline for EAS Participants to accept CAP-based messages, as it may be inadequate to allow a smooth transition to next-generation EAS. The Commission should inject flexibility into this obligation, either by extending the timeline to a full year, or perhaps resetting the trigger for the 180-day timeline to an event other than FEMA's publication of CAP standards, such as a finding that tested and certified CAP-compliant products are abundantly available in the market for purchase and installation by EAS Participants. *See, e.g.*, NCTA Comments at 4.

III. EAS Training Should Be Expanded and Federally Funded

The reliability and usefulness of next-generation EAS will depend on the experience and expertise of everyone involved. Broadcasters are concerned that too many state and local emergency managers may lack awareness or proficiency regarding EAS.[11]

The majority of emergencies are local; therefore, it is critical that local emergency personnel are aware of the benefits of next-generation EAS, and well versed in how to use the new alerting system. The Commission should adopt rules or policies designed to help educate and train state and local emergency managers about the benefits of

[11] Gary Timm Comments at 12; TAB Comments at 2-4; NAB Comments at 5; Adreinne Abbot-Gutierrez Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 1. For example, the Texas Association of Broadcasters expresses concern about the EAS training and equipping of emergency personnel in Texas. TAB Comments at 1.

EAS, including the improved capabilities of CAP-based alerting.[12] The Texas Association of Broadcasters (TAB) suggests that something as simple as the Commission sending letters to state and local authorities reminding them of the benefits of EAS could be a helpful part of a comprehensive training program. TAB Comments at 2. Such a program should be developed in concert with EAS Participants, and perhaps led by FEMA Region Offices. Gary Timm Comments at 12.

Funding education and training could be a challenge. NAB suggests that the Commission coordinate with FEMA on identifying possible federal grants or other funding sources that could support expanded training of state and local emergency personnel on the use of EAS. Gary Timm Comments at 12. Thereafter, the Commission and FEMA should consider ways to create ongoing incentives for local authorities to remain current in their EAS training, perhaps by conditioning future funding of state and local emergency personnel for disaster planning on an obligation to utilize CAP. TAB Comments at 3. Alternatively, the Commission could include a declaration on the applications or renewal forms for communications licenses held by

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[12] NAB encourages the Commission to adopt the CAP-EAS Implementation Guide created by the EAS-CAP Industry Group (ECIG). ECIG is a coalition of EAS equipment manufacturers, software and service providers and other interested parties, that crafted the Implementation Guide to reduce the areas of uncertainty in how a CAP-formatted EAS alert will be delivered to the public via CAP. At the present time, it appears that FEMA intends to focus its efforts on how to successfully deliver a uniform CAP-based EAS alert to EAS Participants, rather than standards for how EAS Participants should extract and retransmit that data. The ECIG Implementation Guide provides well-informed, useful technical recommendations for completing these parts of the process. NAB submits that it is important for the Commission, as it considers changes to the Part 11 rules governing EAS, to adopt ECIG's Implementation Guide, to ensure uniformity among EAS Participants' acceptance and distribution of EAS messages, to avoid duplicative EAS messages and public confusion. EAS-CAP Industry Group Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 1-2; Gary Timm Comments at 8.

state and local governments where officials could verify their participation in EAS training.[13]

IV. The Record Contains Several Worthy Suggestions for Improving the Commission's EAS Policies

Governor-Issued EAS Alerts. In the EAS Second Report and Order, the Commission authorized state governors (or their designees) to initiate CAP-based EAS alerts.[14] However, the Commission has yet to clarify how governor-issued EAS alerts are to be processed by EAS Participants. For instance, the existing EAS protocols do not include an origination code for alerts that are issued by a governor. Nor is there firmware to prioritize an EAS alert from a governor. NCTA Comments at 4.

The Commission's findings in the EAS Second Report and Order make clear that EAS Participants must only accept EAS alerts from governors that are formatted in CAP. The Commission states at paragraph 56 of that order that it will "only require EAS Participants to receive CAP-formatted EAS messages delivered to them by a state governor . . . ",[15] and at paragraph 64 states that "EAS Participants must be provided with CAP-formatted messages containing appropriate codes" to transmit geographically targeted alerts.[16] However, the actual rule governing this requirement does not restrict EAS Participants' obligation to carry governor-issued EAS alerts only to alerts that are formatted in CAP, instead referencing "state-level and geographically targeted EAS messages, as aggregated and delivered by the state governor or his/her designee . . ."

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[13] This would be consistent with GAO's recommendation that FEMA develop a plan to verify that EAS participants have the training and technical skills to issue EAS alerts. GAO EAS/IPAWS Report at 10.

[14] *Second Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 13275, 13300 (1997) (EAS 2nd R&O/EAS FNPRM); 47 C.F.R. § 11.51.

[15] *Id*.

[16] *Id*., 22 FCC Rcd at 13304.

47 C.F.R. § 11.55. The Commission thus should update this rule to reflect the Commission's intent, as set forth in the EAS Second Report and Order. *See also* Gary Timm Comments at 3.

Finally, with respect to governor-issued EAS alerts, NAB continues to believe that no local authority below the gubernatorial level should be permitted to trigger the EAS. NAB Comments at 9-10. We remain concerned that expanding the universe of officials who may issue EAS alerts may lead to unwarranted alerts, confusion among officials over who is supposed to trigger an alert for a particular event, and public desensitization to emergency alerts. The Commission therefore should limit the authority to issue EAS alerts only to governors or their designees.

***Cable Override*s.** In light of the importance of viewers receiving emergency information, NAB again requests that the Commission adopt a requirement that, pursuant to a broadcast television station's request, cable operators may not override that station's programming during a cable system's EAS interruption of regularly scheduled programming.[17] Currently, many cable systems during an EAS situation automatically override all channels by forcing a switch to a different channel that displays a simple EAS crawl over a blue screen. As a result, local viewers lose access to the vital, detailed, life-saving information that local television stations air during emergency situations, such as storm paths, escape routes, and targeted neighborhood updates. As TAB notes, broadcasters' emergency information is typically more robust and useful than the more generic information provided by cable operators. TAB Comments at 4.

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[17] *See, e.g.,* Comments of the National Association of Broadcasters, EB Docket No. 04-296 (filed Jan. 24, 2006), at 19-22.

The Commission's rules permit broadcasters to negotiate with local cable operators to implement selective override.[18] However, many broadcasters have been unsuccessful in obtaining a cable operator's consent not to override their programming on their DTV channels. Some cable operators have asserted that, because of limitations in digital cable equipment, selective override is either too expensive or technically impossible. In actuality, however, most if not all cable set top boxes and head end equipment comply with industry standards that enable the selective exclusion of individual channels.[19] To the best of our knowledge, all cable set top boxes and head end equipment include this feature. Thus, providing the selective override of broadcast channels is almost a zero-cost proposition for many cable systems.

In the absence of a federal mandate, broadcasters are continuing to face resistance from some cable operators in this area, thereby depriving the public of the in-depth emergency information provided by local television stations. TAB Comments at 5. NAB submits that, as it considers changes to the Part 11 rules, the Commission should take steps to ensure that cable operators will not override broadcasters' emergency information during an EAS interruption. As a condition of such a rule, the local television station could be held responsible for EAS activations and tests on that specific cable channel. Going forward, NAB would encourage the Commission to explore ways to sunset or require the gradual transition of any cable equipment,

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[18] Amendment of Part 73, Subpart G, of the Commission's Rules Regarding The Emergency Broadcast System, *Third Report and Order*, FO Docket Nos. 91-171 and 91-301 (1998).

[19] American National Standards Institute*, (ANSI) J-STD-042-2007; Emergency Alert Messaging for Cable* (2007) at § 5 and § 7.4 (specifying the protocol for conveying to an STB a list of services (channels), called *exception services*, for which an emergency alert event shall not apply).

including set top boxes, cable cards and cable television-ready receivers, incapable of exempting particular channels from EAS overrides to equipment that is capable of override exemptions.

Specific Area Messaging Encoding (SAME). The existing EAS is based on Specific Area Messaging Encoding (SAME) protocols. The SAME format has some inherent limitations, such as overlap among some of the three-letter event codes used to trigger alerts, and an imprecise practice of geographically targeting alerts based on political boundaries rather than territorial hazard predictions. *See, e.g.*, Art Botterell Comments at 8-9. Ideally, the implementation of CAP and next-generation EAS will ultimately correct these deficiencies. However, although government originators of EAS messages eventually will originate CAP-based EAS messages, and EAS Participants will be capable of accepting CAP-based alerts, current technology will not allow broadcasters to retransmit CAP-based EAS messages. As a result, broadcasters will have to convert CAP-formatted alerts into SAME-formatted messages before distribution to the public.

NAB is concerned about the potential impact of this technology gap. First, we support Mr. Botterell's suggestion that the Commission (and FEMA) ensure that the inadequacies of SAME (*e.g.*, event code overlap, targeting based on political jurisdictions) are not carried over into a new CAP-based next-generation EAS. Art Botterell Comments at 9.

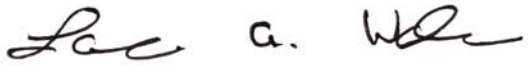
Second, because CAP-formatted EAS is far superior to SAME, broadcasters should not have to linger in a SAME-formatted EAS system indefinitely. We recognize, however, that the existing EAS system does have certain advantages over the next-

generation system, such as a relatively simpler infrastructure, with multiple avenues for receiving or relaying alerts. Sage Comments at 2. The existing system could also provide critical redundancy to next-generation EAS. The Commission thus should consider how long broadcasters should maintain SAME-based EAS following the implementation of CAP-formatted EAS. NAB would support a reasonable transition period during which broadcasters would retain a redundant legacy EAS protocol, while the Commission investigates how to eventually bring CAP capabilities to broadcasters' EAS public alerting system.

V. Conclusion

Accordingly, NAB requests that the Commission complete this inquiry in a manner consistent with the proposals described above.

Respectfully submitted,



Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
Larry Walke
THE NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street N.W.
Washington, D.C. 20036

Kelly Williams
David Layer
NAB Science & Technology

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